

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
PENNSYLVANIA

CNX MIDSTREAM DEVCO I LP,	:	CIVIL DIVISION
	:	
Plaintiff,	:	
	:	Docket No.: 2:20-CV-00290-AJS
v.	:	
	:	
APPLIED CONSTRUCTION SOLUTIONS,	:	
INC.,	:	
	:	
Defendant.	:	

**PLAINTIFF'S SUPPLEMENTAL CONCISE STATEMENT OF UNDISPUTED MATERIAL  
FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes Plaintiff, CNX Midstream Devco I LP ("CNX"), by its attorneys Dickie, McCamey & Chilcote, P.C. and pursuant to L.C.v.R. 56(B)(1), files this Supplemental Concise Statement of Undisputed Material Facts in Support of Plaintiff's Motion for Partial Summary Judgment, stating as follows:

1. Plaintiff incorporates by reference its previously filed Concise Statement of Undisputed Material Facts in Support of Motion for Summary Judgment.

2. On October 24, 2018, CNX issued and uploaded onto CNX ShareFile under the following ShareFile RFP Folder 0660-18095-CNXM Morris Station XP the following RFP questions and answers:

[Question] Can you please clarify if this contract will be a T&M or a lump sum contract?

[Answer] T&M.

[Question] If it is T&M, is this T&M not to exceed amount based upon your submitted lump sum Budget?

[Answer] Yes.

(Supplemental Affidavit of Todd Shumaker at ¶¶3-7, Exhibit 10).

3. Pursuant to Article 2, the parties' contract incorporates by reference several documents including CNX Morris Expansion RFP questions – October 24, 2018.

(Supplemental Affidavit of Todd Shumaker at ¶8, Exhibits 1, 10).

4. The question and answer document issued and uploaded by CNX on October 24, 2018 at CNX ShareFile under the following Shared RFP 0660-180925-CNXM Morris Station Exp. RFP makes clear that the parties' contract is a T&M NTE. (Supplemental Affidavit of Todd Shumaker at ¶¶2-9).

5. Jim Glass was an ACS employee charged with preparing ACS's bid on this Project. (Defendant's Response to Interrogatory No. 4).

6. ACS's employees, Jeff Comfort and Dan Jungo assisted Mr. Glass in formulating ACS's bid on the Project. (Defendant's Response to Interrogatory No. 4).

7. Mr. Glass and Mr. Comfort were aware of the provisions of the parties' contract. (Defendant's Response to Interrogatory Nos. 5 and 7).

8. Mr. Glass was involved in Change Orders No. 1 and 2 that were negotiated by the parties. (Defendant's Response to Interrogatory No. 17).

9. On October 26, 2018, Mr. Comfort sent an email to Mr. Glass notifying him "here is the update that Dan [Jungo] sent a short while ago." Attached to this email is a copy, in its entirety, of the very CNX responses to RFP questions that were uploaded on CNX's electronic bidding system on October 24, 2018 informing all bidders that the contract was to T&M NTE. (Clifford Declaration at ¶2, Exhibit 12).

10. In response to an email from another employee of ACS, David Larkin, regarding additional costs incurred by ACS on the Project, Mr. Glass informed Mr. Larkin

that “this is a T&M Not to Exceed and not a T&M thus [we] have to justify every change.”  
(Clifford Declaration at ¶3, Exhibit 13).

Respectfully submitted.

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/William D. Clifford

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**CERTIFICATE OF SERVICE**

I, William D. Clifford, Esquire, hereby certify that a true and accurate copy of the foregoing ***Plaintiff's Supplemental Concise Statement of Undisputed Material Facts in Support of Motion for Partial Summary Judgment*** has been served this 26<sup>TH</sup> day of March, 2021, via electronic mail by the Court's CM/ECF System.

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